

FILED ^{ca}
at 1 O'clock & 30 min P M
Date 1/31/07
Samuel L. Kay, Clerk
United States Bankruptcy Court
Savannah, Georgia

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

IN RE: DEMETRIUS O. DENTON)	CHAPTER 13 CASE
)	NUMBER <u>06-50467</u>
DEBTOR)	
)	
DEMETRIUS O. DENTON)	
)	
PLAINTIFF)	
)	
)	ADVERSARY
)	PROCEEDING
v.)	NUMBER <u>06-05014</u>
)	
)	
GEORGIA DEPARTMENT OF)	
HUMAN RESOURCES,)	
CHILD SUPPORT ENFORCEMENT)	
)	
DEFENDANT)	

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on cross-motions for summary judgment filed by both parties in this adversary proceeding. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A). At issue is whether Defendant Child Support Enforcement ("Georgia")¹

¹The Defendant asserts that Child Support Enforcement, now known as Child Support Services, is a division of the Georgia Department of Human Resources and is not itself a legal entity

violated the automatic stay provisions of 11 U.S.C. § 362 by not lifting or vacating income deduction orders for child support arrearages upon the filing of Debtor Demetrius Denton's chapter 13 bankruptcy case. Georgia's motion is granted and Denton's motion is denied for the reasons that follow.

Undisputed Facts

On June 19, 2006, Denton filed a chapter 13 bankruptcy petition that scheduled a Domestic Support Obligation for child support. On August 22, 2006, Denton's Chapter 13 Plan and Motion("Plan") was confirmed. The Plan provided for payment over the life of the plan for "Section 507 claims."² (Plan ¶ 2(c).)

Shortly before Denton filed his bankruptcy petition, his employer began withholding money from his salary under two administrative income deduction orders through which Georgia sought to recover both current and past-due child support for four children. Georgia did not release or modify the income deduction orders after Denton filed his bankruptcy petition.

subject to suit.

²Section 507 claims include "allowed unsecured claims for domestic support obligations that . . . are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law." 11 U.S.C. § 507 (a)(1)(B).

Denton's monthly payments to the Chapter 13 Trustee include an amount toward his child support arrearages. However, Georgia did not file a proof of claim for these arrearages, and neither did Denton file a proof of claim on Georgia's behalf.

Conclusions of Law

I.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. F.R.C.P. 56(c). Rule 56 is applicable in adversary proceedings. See F.R.B.P. 7056.

The party seeking summary judgment must initially demonstrate the absence of any dispute as to material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the opposing party must go beyond the pleadings to show that there is a genuine issue for trial. Id. at 324. In determining whether there is a genuine issue of material fact, the court must view the evidence in the light most favorable to the party opposing the motion. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970).

Here, the parties agree on all material facts. The question of law that remains is whether 11 U.S.C. § 362(b)(2)(C) provides for post-petition collection of child support arrearages through income

deduction orders or whether such orders violate the automatic stay.

Where the language of the statute is plain, "the sole function of the courts is to enforce it according to its terms." U.S. v. Ron Pair Enters, Inc., 489 U.S. 235, 241 (1989). Here, the statute expressly provides that the bankruptcy petition does not operate as a stay "with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or statute." 11 U.S.C. § 362(b)(2)(C). A "domestic support obligation" includes a child support debt that accrues before the date of the order for relief. 11 U.S.C. § 101(14A). The domestic support obligations at issue accrued before the date of Denton's petition. Accordingly, Georgia's income deduction orders for child support arrearages do not violate the automatic stay.

II.

In addition to arguing that Georgia's income deduction orders violate the automatic stay, Denton contends that Georgia is bound by Denton's Plan and thus cannot collect the child support arrearages except through the Plan. Denton correctly understands that "[t]he provisions of a confirmed plan bind the debtor and each creditor." See 11 U.S.C. § 1327(a). However, Denton incorrectly

concludes that this provision restricts Georgia to collecting Denton's child support arrearages through the Plan. In fact, Georgia is not entitled to any payments under the Plan.

Following confirmation of a plan, "distribution shall be made to creditors whose claims have been allowed." F.R.B.P. 3021. See also Zich v. Wheeler Wolf Attorneys (In re Zich), 291 B.R. 883, 886 (Bankr. M.D. Ga 2003). This provision implies that no distribution, i.e., no payments, will be made through the plan on claims that have not been allowed. In order for the claim of an unsecured creditor to be allowed, either the creditor itself must file a proof of claim under F.R.B.P. 3002 or the debtor must file a proof of claim on the creditor's behalf under F.R.B.P. 3004.

Because no proof of claim was filed for Denton's child support arrearages, Georgia does not have a \$ 507 claim provided for by the Plan.³ Accordingly, Georgia is not entitled to receive any payments through the Plan.

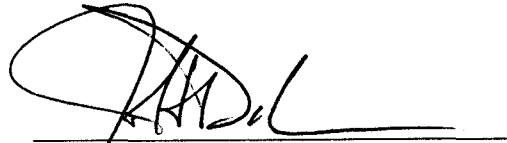
Judgement

It is therefore ORDERED that Georgia's motion for summary

³Because no proof of claim was filed, I do not consider whether § 1327 operates to invalidate an income deduction order permitted under § 362(b)(2)(C) when the debt is an allowed \$ 507 claim in a confirmed plan.

judgement is granted.

It is further ORDERED that Denton's motion for summary judgment and request for fines, sanctions, and attorney fees are denied.

A handwritten signature in black ink, appearing to read "J. Dalis", written over a horizontal line.

John S. Dalis
United States Bankruptcy Judge

Dated at Brunswick, Georgia,
this 29th day of January, 2007.